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ATIONALITY AND ALLEGIANCE

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R. S. FRASER

Solicitor of the Supreme Court (England)

THE INTERNATIONAL LAW ASSOCIATION

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Whatever an Act of Parliament prescribes is law, even though it contravenes every principle, constitutional or only of private right, recognised before the passing of the Act as inviolable. Such is the theory. Parliamentary sovereignty is most imperatively limited *de facto*—in fact. Its actual power is not a whit broader for having a free field in law, so long as the field in which it really moves is fenced high about by firm facts.—"The State" (sect. 1446), by Woodrow Wilson.

Oscar Browning, in his introduction to "The State," writes: "Political science has suffered in England from having no text-books. There have been books about the subject, but none upon it. . . . Whenever that science is regarded not only as indispensable to an historian but as the very backbone of historical study, Mr. Wilson will be considered as the foremost, if not the first, of those who rendered possible the intelligent study of a department of sociology upon which the happiness and good government of the human race eventually depend."

The above prophetic utterance of Oscar Browning, as all will admit, has been dramatically justified by the prominent *rôle* played by the President in his epoch-making speech at the Versailles Conference to the Representatives

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of the thirty assembled nations on February 14 last, when introducing and explaining his draft scheme for establishing a League of Nations, now happily approved, to secure international equilibrium in the future. But it may not be generally appreciated that, should democracy seek to safeguard itself from the repetition of the flagrant blunders committed by the Legislature of this country in the passing into law of the Military Service (Conventions with Allied States) Act, 1917, and in seeking to enforce the Russo-British Convention based thereon, it will be necessary that our legislators should qualify themselves for the proper discharge of their office by acquiring an elementary knowledge, at least, of the historical problems on which they may be called upon to legislate.

At a time of war, haste may account for many mistakes, but these should not be multiplied by the absence of requisite study, nor by neglect to require from prominent officials a higher standard of research than that exhibited in the drafting of the impugned statute. Nationality and Allegiance, like Scylla and Charybdis, confronted the framers of the Bill which became the Act of 1917, and most lamentably did they come to grief in their inability to avoid shipwreck. It is true that the Bill passed, but at what a cost to our consistency and to British prestige! Great Britain, which had long enjoyed the proud distinction of protector of defenceless fugitives seeking asylum from the persecution of despots, suddenly reversed her policy. National emergency may have required the modification of the rule theretofore observed that no alien resident in this country should be conscripted into the British Army for service abroad, or required to serve the country, save in the militia for home defence, or in the police. I should personally have advocated a change, in view of the changed conditions introduced by rapid transport and quick communication, but it seems to me that no defence can be offered to the course followed in misreading the facts of history so clearly and cogently laid down in President Wilson's work, and, under the camouflage of a convention with M.

Terestchenko, Foreign Minister of the discredited Revolutionary Government of M. Kerensky (never even submitted to nor ratified by his Government), of treating as Russians the Poles and Jews who had been driven from Russian territory by the inhuman treatment meted out to them by the Czars. To proffer such men (many of whom had volunteered for service on the outbreak of war but had been rejected as aliens) the alternative of returning to Russia to join the army of that country, leaving their wives and children here unprovided for, or of joining alien labour battalions in the British Army in which they became but hewers of wood and drawers of water, irrespective of health, education or station in life, was not calculated to render them willing conscripts. I do not touch on subsequent abuses, such as the passing for military service by Medical Boards of the lame, the halt, the partly blind, of men in an advanced stage of consumption, and of others suffering from disease, except to deplore so grave a miscarriage of the intentions of Parliament. The convention as regards Russia was, I contend, *ultra vires*.

Professor Holland Rose, in the introduction to his work "The Development of the European Nations," remarks that "as we gaze at the revolutions and wars which form the storm centres of the past century, we can see some of the causes that brought about those storms—the first, that great impulse towards individual liberty, which we name democracy; the second, scarcely less mighty and elemental, that prompts men to effect a clear union with their kith and kin, namely, nationality. . . . Among many peoples these impulses lay dormant for ages, and were only called to life by some great event, such as the intolerable oppression of a despot or of a governing caste that crushed the liberties of the individual, or by the domination of an alien people over one that obstinately refused to be assimilated."

The subject of Nationality first claims our attention; and I later treat of that of Allegiance.

Alfred E. Zimmern, in his book "Nationality and Government," published in the present year by Chatto and Windus, sheds no little light on

the difficult subject of Nationality, and I feel justified in quoting him at some length. As a quarry affording alike information and inspiration to the seeker after gems of thought, Zimmern's work is of inestimable value. He writes :

" The first step towards the settlement of the problem behind the nationality wars of the present day, towards the true understanding of nationality, is to realise that it is something deeper than political organisation, something which should command not only our toleration but our respect. . . . Tolerance, then, is the first milestone on the road towards internationalism. . . . Yet it is humiliating to reflect how recent, even in this country, the growth of this feeling has been. We took the first step when in 1756, at a time when we were cheerfully persecuting Roman Catholics in Ireland, we pledged ourselves to respect the French language and customs and the Catholic faith of the people of Canada. . . . Nationality is apt to become intensified under persecution, and, like religion, to take on morbid and unhealthy forms. Hence arise the political nationalist movements. . . . The political nationalist feels himself driven by an overpowering impulse, which he knows is genuine and springs from the depths of his nature, but he does not know whither it is leading him.

" Compare the record of the last 50 years of the typical national States, Germany, Italy, France under Napoleon III., the Balkan States, with that of the two great international States, the British and American Commonwealths. Comment is unnecessary. Political nationalism does not make for tranquillity. . . . Nationalism in excelsis is a raging tearing hatred of the alien, which would be laughable for its childishness did we not see it manifested in the world around us. . . . People were as intensely ' religious ' three centuries back as they are nationalist to-day, yet they could not see that religion, which meant so much to them, was something deeper in its nature and appeal than ecclesiastical organisation. Thus it came about that at the end of the religious wars at the Peace of Westphalia there was drawn up a

new map of Europe delimited on the principle of '*cujus regio ejus religio.*' Sects were sorted out according to the religious opinions of the ruling prince. In the reformed communities Protestant State Churches replaced the old Catholic supremacy. . . . The real settlement of the problem which led to the religious wars came a century later with the spread of the idea of Toleration. . . . Nationality is more than a creed or a doctrine or a code of conduct; it is an instinctive attachment: it recalls an atmosphere of precious memories, of vanished parents and friends, of old custom, of reverence, of home, and a sense of the brief span of human life as a link between immemorial generations, spreading backwards and forwards. Horace Meyer Kallen, in his 'Democracy *versus* the Melting Pot,' published in the New York *Nation* for February, 1915, observes: 'At his core no human being . . . is a mere mathematical unit like the economic man. Behind him in time and tremendously in him in quality are his ancestors; around him in space are his relatives and kin, looking back to a remoter common ancestry. In all these he lives and moves and has his being. They constitute, literally, his *natio*, and in Europe every inch of his non-human environment means the effects of their action upon it and breathes their spirit. The America he comes to, beside Europe, is nature virgin and inviolate; it does not guide him with ancestral blazings: externally he is cut off from the past. Not so internally: whatever else he changes, he cannot change his grandfather.' . . . The deep truth of Kallen's teaching may be unfamiliar to English people: for to them there is no conflict of sentiment between citizenship and nationality. Their home, their country, their nation, their State are all alike English. . . . In the large-scale rapidly developing States of the outer world Nationality is an instinct which, if left to itself, would slowly die of inanition, smothered beneath the pressure of the material forces which are the dominating feature in modern trans-atlantic life. In Europe the worst enemy of Nationality is a bad idealism: in the Americas its worst enemy is materialism pure and simple.

. . . The French call a man without roots, the *déraciné*. . . . Nationality to the philosopher is not a political question at all—not a question of Sovereign Governments, armies, frontiers and foreign policy. It is only accidentally a political question, owing to the operation of certain forces which are really anachronisms in the twentieth century. It is primarily and essentially a spiritual question, and, in particular, an educational question. . . . Nationality is bound up with the question of corporate life, corporate growth and corporate self-respect. . . . In the narrow side of political Nationalism all the social and ethical values, religion, morality, citizenship, are used for the promotion of one single all-absorbing political end. Compare with this the other process now going on in many parts of the world—the gradual sapping of Nationality and all the traditional customs and restraints with which it is associated. . . . Nationality is not alone a political creed for oppressed people, but an educational creed for the diverse national groups of which the industrialised and largely migratory democracies in our large modern States must be increasingly composed. . . . The problem of Nationality confronts us to-day in two distinct forms. There is the problem in Central and South-Eastern Europe, which, owing to the war and the long chain of events which preceded it, is primarily a *political* problem ; and there is the spiritual and educational problem which confronts us in all parts of the world, wherever economic activity or what is called Progress is breaking up old forms of life, whether it be in South Wales or in India, in Nigeria or the United States, among the Irish in Liverpool and Glasgow or among the Jews of the East End of London. . . . The danger in our thought at the moment is not that we should ignore the political side of Nationality, but that we should exaggerate its importance and mistake a temporary expedient and necessary stage in political progress for a permanent solution and a satisfactory political ideal. . . . No task is more urgent among the backward and weaker peoples than the wise fostering of nationality and the maintenance of national traditions and corporate life as a

school of character and self-respect. . . . The theory which makes national feeling the criterion of Statehood would require that French Canada should pass to France, Wisconsin to Germany, and part of Minnesota to Norway, while the New York Police, consisting for the most part of Irishmen, would become the servants of the new Home Rule Government of Ireland. But the fact that the theory is absurd does not prevent its being put into practice. To what State ought Macedonia to belong ? It depends, according to the political nationalists' theory, on the nationality of the people of Macedonia. Some villages change their nationality more than once in a season under the persuasion of the bayonets of rival bands of wandering propagandists. Nationality has in fact become a matter of propaganda, like religion, and the wars that it leads to partake of the aimless and blundering brutality of religious wars in which men try to save other men's souls by offering them the alternatives of conversion or the stake. . . . It took Western Europe several generations after the Thirty Years' War to realise that religion, being subjective, was no satisfactory criterion of Statehood, and that a wise ruler must allow his subjects to go to heaven by their own road. It may take Eastern Europe as long to reach the same conclusion about Nationality. But in the long run the theory of a National State will go the way of Henry VIII.'s and Luther's theory of a National Church. In reality, of course, English people when they invoke the principle of Nationality mean the principle of Democracy—the principle that a people, however constituted, whether homogeneous like the Italians, or closely related like the Southern Slavs, or not homogeneous at all, like the Belgians and the Swiss, has a right to dispose of its own destiny according to its corporate will. . . . It is clear that there is a fundamental difference between the two conceptions. Nationality, like religion, is subjective ; Statehood is objective. Nationality is psychological ; Statehood is political. Nationality is a condition of mind ; Statehood is a condition in law. Nationality is a spiritual possession ; Statehood is an enforceable obliga-

tion. Nationality is a way of feeling, thinking and living ; Statehood is a condition inseparable from all civilised ways of living.

" . . . . The English are the great exponents of practical nationalism ; but just because it is always with them a traditional possession, they have reflected little upon its nature and meaning. . . . . The best exponents of nationalist theory in modern times have been the Jews, who have made in this region a contribution, if not comparable, at least worthy to be mentioned side by side with their contribution to the world's advance in the field of religion."

Mr. A. J. Balfour's statesmanlike letter to Lord Rothschild, announcing the purpose of the British Government to re-establish the Jewish State, stands as the Magna Carta of Jewish political nationality, enshrining the result of the sustained thought and devoted work of the Jewish national movement. He wrote : " His Majesty's Government views with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country." Zimmern comments that we have here " in one historic sentence, the complete association of Nationalism and Toleration. I believe this document will be epoch-making, not only for the Jews but for the world. It is the pioneer of a new era—an era which will see the world divided, for political purposes, into supernational States or Commonwealths, and ultimately unified, but cherishing a large number of national individualities, centres of national tradition and inspiration, which will save the soul of mankind from the deadening influences of materialism and uniformity."

Miss Jane Addams, in her book on " Newer Ideals of Peace," gives some telling instances of the practical difficulties of turning the immigrant into an American by the old-fashioned methods. She describes how on the night of one Thanksgiving Day she " spent some time and zeal in a

description of the Pilgrim Fathers, and the motives which had driven them over the sea, while the experiences of the Plymouth colony were illustrated by stereopticon slides and little dramatic scenes. The audience of Greeks," she writes, "listened respectfully, although I was uneasily conscious of the somewhat feeble attempt to boast of Anglo-Saxon achievement in hardihood and privation to men whose powers of admiration were absorbed in their Greek background of philosophy and beauty. At any rate, after the lecture was over, one of the Greeks said to me, quite simply: 'I wish I could describe my ancestors to you; they were very different from yours.' His further remarks were translated by a little Irish boy of eleven, who speaks modern Greek with facility and turns many an honest penny by translating, into the somewhat pert statement: 'He says if *that* is what your ancestors are like, that his could beat them out.'"

Edgar Gardner Murphy, in his book "The Basis of Ascendancy," writes: "The deepest thing about any man—next to his humanity itself—is his race. The force and distinction of his racial heritage, even where there is much admixture of alien blood, is peculiarly, conspicuously strong. This persisting and pervasive individuality of race is the ground and basis of his essential culture—by which I mean not the formal product of a literature, a religion or a science, but that more intimate possession which a race draws into its veins and blends within the very stuff and genius of its being from the age-long school of its forests, its rivers, its hungers, its battles with beast and fever and storm and desert, that subconscious, ineradicable life which stirs beneath its deliberate will and is articulate through all the syllables of its every stated purpose."

"In some countries, almost throughout the entire Orient, the idea of nationality," writes Leroy-Beaulieu, "does not exist at all, or it is confounded with that of religion. This is the case especially with the Mohammedans; the true believer knows no fatherland but Islam; for him all national differences disappear before the common faith. Therein lies the inferiority,

or if you prefer, the superiority of Islam. . . . In many countries, where the old confusion of nationality and religion still survives, emancipation from such a state of things does not at all depend upon the Jew. Neither the Moslem nor the Asiatic Christian would allow him to call himself Turk or Arab, Greek or Armenian. The Jews there have no choice but to remain a people set apart. They can have no country but Israel. This is so true that, similar to his Aryan or Turanian neighbours, an Asiatic Jew who changes his faith believes that he has changed his nationality at the same time. This identification of religion with nationality was not always peculiar to the East. Intolerance and politics endeavoured to introduce it into the Western mind, sometimes in the interest of Rome, sometimes in that of the reformed faith. It was the principal aim of the sixteenth and seventeenth centuries in France, England, Holland, Austria-Hungary, Poland, and in the German and Scandinavian States. If Louis XIV. and William III. were equally unsuccessful in this attempt, it is because such an identification was contrary to the Western spirit. At a time when it seemed impossible for an Englishman to become a Papist or a Frenchman to become a Protestant, it was quite natural that a Jew could become neither an Englishman nor a Frenchman. From this point of view Russia continued entirely oriental—or certainly did down to the abdication of the Czar. In Russian eyes there was no true Russian except the members of the Greek Church. . . . It is not so much religious as a sort of national intolerance that caused the persecution of the Jews in Russia. If it is certain that alien blood, pagan or Christian, flows in Jewish veins, it is still more certain that the Christian nations have an admixture of Jewish blood. . . . In order to adapt itself to our Western civilisation, Judaism must ' modernise ' itself ; in order to conform to the requirements of modern national life, it must ' denationalise ' itself. *Per contra* it is claimed by anti-Semites that Israel threatens to denationalise the Modern Nations. . . . The enemies of the Jew have always been wont to attack in him the stranger. The national

grievance is less modern than it looks. It has been at the root of every charge made against the Jews for centuries. In order to decide whether Israel really constituted a State within the State and a nation within the nation, our forefathers did not await the development of modern theories on the conflict of races and the struggle for existence. If our countries were imperilled by the Semites, this was surely the case with the Spanish kingdoms, annexed to Africa by the conquest of the Arabs, and re-united to Europe by the Cross. In aiming their blows at the Jews and the Moslems, these Spaniards sought instinctively to ' de-semitise,' to ' de-africanise ' themselves. Let us go back still further : the Antisemitic spirit manifested itself already in the uprisings of the great cities of antiquity against the Jews. In Rome, Antioch and Alexandria it was the stranger whom the Roman and Greek populace attacked, and, if not the race, at any rate foreign customs and an alien civilisation as much as the enemies of the gods. The same may be said of the classic writers. Juvenal and Tacitus, in assailing the Jewish Sabbath and the practice of circumcision, were disturbed about the ' Judaising ' of ancient society ; what alarms them is the substitution of Hebrew laws or Hebrew customs for Roman customs. The national complaint against Judaism as a foreign tribe existed prior to the downfall of Jerusalem and the dispersal of Israel. Its formula may be found in the Bible ; it was pronounced by Haman in the Book of Esther, and by Pharaoh in Exodus. ' And Haman said unto King Ahasuerus : Here is a certain people scattered abroad and dispersed among the people in all the provinces of thy kingdom ; and their laws are diverse from all people ; neither keep they the king's laws.' In those days people did not shrink from thoroughgoing measures. And Haman added : ' If it please the king, let it be written that they be destroyed.' . . . . Twenty-five centuries have elapsed since Israel was saved by the beauty of Queen Esther, and yet the remark of Haman, son of Hammedatha, the Agagite, has not lost all truth. . . . For 1500 years the Jews have presented the almost unique pheno-

menon of a nation without a land. The Jews were the first to say of themselves : Our people, our nation. The law was to them a national as well as a religious bond. They lived on the memory of Jerusalem which was still the fatherland of their souls and the goal of their aspirations. Zion continued to be the mystic capital of dispersed Israel ; they prayed for its restoration. . . . We must ask ourselves whether Judaism will everywhere and for ever signify a nation as well as a religion ; or, in other words, will the Jew who settles among nations mainly Christian always be an alien, dwelling in their midst without becoming a part of them ? He who insists that nationality must grow out of a common faith or a common ancestry can have no doubt on the subject. To him the Jew will never become a Frenchman, a German, a Hungarian or a Russian ; he will never be anything but a Jew."

Leroy-Beaulieu adds : " To the French mind, nationality consists of something broader and subtler. *But we must not always judge other nations by our own.*" It seems to the writer that here Leroy-Beaulieu aptly puts the crux of the question touching the political position of the Russian-Jew who had departed from the Russian territorial jurisdiction. Indeed, the Russian and French conceptions of Jewish nationality are fundamentally opposed.

It may be appropriate here to refer to the keen interest taken by ex-President Roosevelt in the subject of nationality. Writing to Major Putnam a month before he died, he said : " I am spending all my endeavours to secure in this country a spirit of undivided American nationalism, based on an Americanism which disregards all questions of national origin and which treats this as a new nation, different from all other nations."

Nationality is a very vague term, but meaning, whatever else it implies, a heightened sense of group consciousness, a feeling for a corporate life animating a certain mass of people and separating them from other people. As it secures recognition it gathers momentum and carries forward the sense of exclusiveness based on exaltation and seeks to dominate other

peoples. The emancipated slave plays the tyrant in his turn ; and it is from the conception of the almost magical, almost supernatural sanctity of its group system, enormously overdone and exaggerated on account of many incidents in the history of the nineteenth century that has come the idea of the self-contained State. The first vague uncertain beginnings towards the attainment of nationality by the various peoples of Europe were shown very soon after the disruption of the Empire of Charlemagne, and it went on very uncertainly and fluctuatingly through the middle ages down to the time of the Reformation, after which date it became much more conscious of its own purpose and took on a consistency which it had not previously exhibited. It was eclipsed for a time by Napoleon, but after his downfall it again emerged with a new vigour, and it accomplished more during the nineteenth century than in all the other centuries of European history. The whole movement of European history has been towards the separation of the peoples from each other and associated all through with the desire on the part of the peoples to have the conditions of a free, self-governing life for themselves.

No sooner had the peoples begun to define their own life or to distinguish themselves from each other, than there began the movement to define the relations that ought to exist between them as free Sovereign independent Powers. In the seventeenth century we have three very significant things in our history showing themselves for the first time. It was the seventeenth century that saw the birth of international law. It was the seventeenth century that saw the birth of our diplomatic system, and it was the seventeenth century that saw the birth of the balance of power. Every one of them implied a connected system of States. They all tried to define their relations with each other, applying the principle of civil vicinity.

"The Commonwealth of Nations," edited by Lionel Curtis, written by Experts referring to themselves as "The Round Table," and published by Macmillan in 1916, probably constitutes the most valuable contribution on the subject of

nationality yet produced, embodying as it does, by reference and quotation, (*inter alia*) much of Zimmern's studies. After remarking "The British Empire is a section of humanity cut from top to bottom, and a sample of every typical layer is contained in its jurisdiction," and adding in a marginal note, "The British Empire is almost as various in its composition as mankind itself," it proceeds: ". . . The Biblical writings, which render the ordinary reader more familiar with the social conditions of the East than he is apt to realise, reveal one of its races emerging from the tribal condition and re-organising itself on the principle of a typical theocratic state. The children of Israel are represented in the Book of Judges as conscious of a certain unity by reason of their common descent from Abraham, Isaac and Jacob. But already they have grown too numerous to render obedience to any one descendant or representative of the common patriarchs. They are split into twelve tribes named after the sons of Israel, and already one of these tribes, that of Joseph, has sub-divided into two others, named after his sons, Ephraim and Manasseh. These tribes, having no government in common, are given to internecine feuds with each other, and are likewise exposed to periodic conquest and oppression by peoples like the Philistines or Amalekites, who have already succeeded in regarding themselves as States. From time to time they are delivered by some hero whose individual genius or prowess enables him temporarily to command the obedience of several tribes. Gradually they are driven by internal disorder and external pressure to realise a national organisation and to establish it on a permanent footing by recognising Saul, the Benjamite, as King of Israel. By the author of the Book of Samuel the creation of the Hebrew monarchy is represented as a concession to popular clamour. But that concession having been made, the kingship is founded from first to last on divine authority. 'Is it not because the Lord hath anointed thee to be captain over his inheritance?' cries the seer, as he pours the consecrated oil on Saul's head. The whole duty of the Hebrew

is comprehended in his unbounded obligation to obey the God of Israel. It is only as his vice-regent that the kings are entitled to their obedience, and it is their duty to God which unites them as a people and enables them to rise above their tribal organisation and to constitute themselves a state."

Palgrave, in his Dictionary of Political Economy, published in 1899, vol. iii., p. 1. writes: "The word (Nation) is used in a loose sense to signify any considerable aggregate of human beings, living together in one country, or under one rule. They are generally assumed, with more or less accuracy, to be one race; but if other bonds are sufficiently powerful to have the same uniting effect as those of blood, the community so held together is regarded as a nation, though its people may spring from various stocks. Thus, we call the Swiss a nation, as well as the French, the Germans and the Italians. Yet in Switzerland there are French cantons, German cantons and Italian cantons, in which not only do the bulk of the people belong to the stock indicated by the name, but they speak the French, German or Italian language, as the case may be. The inhabitants of Switzerland are of different races, and use different tongues; but the political ties between them are so strong that they are constantly referred to as a nation. . . . On the other hand, we often find that in common discourse governmental bonds are neglected where the term we are considering is used." Speaking of the condition of Austria, before the war, Palgrave adds: "No one calls the people of the Austrian Empire a nation, though they all owe political allegiance to the occupant of the throne of the Hapsburgs. The usual phraseology describes Austria as a State made up of a number of nations or parts of nations—Germans, Magyars, Slavs, Poles, etc. Between the two ideas, that of blood unity and that of administrative unity, ordinary speech hovers. In fact there is no generally received definition of a nation. Common descent, common language, common history, common religion, common interests, common ideas, hopes and aspirations—all these enter more or less vaguely into the current conception, but

any one of them may be wanting, or two or three of them may be absent, and yet the community that lacks them may be called a nation. Its people must, however, possess what Renan rightly regards as essential to nationhood, a common heritage of memories and feelings, and a present desire to continue their common life. . . . . If it is necessary to assign a technical meaning to a term so loosely used in ordinary discourse, we may, perhaps, conveniently define a nation as a community whose members are bound together by ties of blood, speech, feeling and interest, such as do not subsist between them and the rest of the world, and who are under a common government. This leaves us the term nationality for aggregates of human beings who feel the ties referred to, but do not form one political whole, and enables us to distinguish a "State" from a nation, or a nationality, by laying stress on the mere fact of political authority without reference to the conditions under which it is exercised."

The late Lord Acton in "Home and Foreign Review," July, 1862, (reprinted in his "History of Freedom and the Essays," published in 1907, p. 273) states: "In the old European system—referring to the period before Napoleon—the rights of nationalities were neither recognised by governments nor asserted by the people. The interest of reigning families, not those of the nations, regulated the frontiers. . . . The great importance of nationality in the State consists in the fact that it is the basis of political capacity. The denial of nationality, therefore, implies the denial of political liberty. . . . The greatest adversary of the rights of nationality is the modern theory of nationality. By making the State and the nation commensurate with each other in theory, it reduces practically to a subject condition all other nationalities that may be within the boundary. It cannot admit them to an equality with the ruling nation which constitutes the State, because the State would then cease to be national, which would be a contradiction of the principle of its existence. According, therefore, to the degree of humanity and civilisation in the dominant body which claims all the rights of the community, the

inferior races are exterminated, or reduced to servitude, or outlawed, or put in a condition of dependence. . . . A State which is incompetent to satisfy different races condemns itself; a State which labours to neutralise, to absorb, or to expel them, destroys its own vitality. . . . Duty cannot be dissociated from right, and nations refuse to be controlled by laws which are no protection."

Any attempt to restrict the term nationality to a group of people living under a given political authority, designated the "State" without reference to the vital facts of their essence or existence is contrary to the law of nature, as whereas the State may be destined to pass away, the sense of national consciousness, with the added right of self-determination, will inevitably become accentuated. The operation of natural law in the political world is a factor that the historian and the practical politician alike must face.

The Poles, now happily restored to political freedom, constituted a nation deprived for several decades of Sovereign power. He would have been smiled at, indeed, in England, who had ventured, in the meanwhile, to have questioned the continuance of their nationality. Correspondingly it may be claimed that the chief outstanding example of group self-consciousness existing to-day is unquestionably that of the Jews, whose numerical strength, dispersed throughout the civilised world, far exceeds that of the Poles. The question, whether one group of people or another may have acquired the status of nationhood, may legitimately allow of a difference of opinion, except in the case of the Jews, whose claim to recognition is indisputable. The paper contributed by the Very Reverend Dr. Gaster on "Judaism—a National Religion," to the work "Zionism and the Jewish Future," published by John Murray in 1917, contains an authoritative and irrefutable statement of the Jewish case. Were the Jews to ignore their traditions and to abandon their aspirations to continued separate national existence they would become absorbed in the nationalities by which they are surrounded—but as well may we expect the Ethiopian to

change his skin, as to see the sincere Jew change his religion, which to him is the very breath of his spiritual life, and the link which, binding him to his own people, segregates him from all others. No non-Jew can visit a Jewish religious service, or other communal gathering, without perceiving that with the Jew his religion is a veritable passion in which is clearly discernible the working of natural law in full blast; he could, as reasonably, affect to ignore the wind as to deny the vitality of its fervour and its world-wide determining possibilities.

One of the great tragedies of, or rather resulting from, the war has been the collision between the Polish and Jewish nationalities, following upon the setting up of the Polish Government. That a day of mourning should have been proclaimed by the Jewish Authorities, alike in London and in New York, for the Jews massacred by the Poles, is a fact of which humanity needs to take note. Race-hatred could certainly not have been carried further than for a nation, succeeding to power as the result of the Peace Conference, to seek to extinguish another with which it had lived in close association for generations. The obvious explanation of the antagonism exhibited is, that whereas the instinct of the Pole is limited in its sphere to the national, yet the thousand and one ties existing between Jews domiciled in different countries throughout the world, constrain them to regard nationality as but a step—but a very necessary step—towards the wider conception of inter-nationality, broadening out into that of the Commonwealth of Nations, reached in the League of Nations, which creating a new order of federated State-relations has, it may be hoped, finally superseded the dubious expedients of the diplomatic and of the military castes.

One pauses here to reflect that on the outbreak of the war the Home Office assigned to the Police the duty of determining the nationality of aliens required to register under the Aliens' Registration Act.

It would be well that writers should abandon the misuse of the term nation or nationality when what they seek to signify is the Napoleonic conception of the grouping of peoples for

political purposes, regardless, may be, of nationality, in a given territorial area—in other words the State, claiming to exercise Sovereign power. It is a common place comment that a corporation has neither a soul to be saved nor a body to be kicked, but the aphorism applies even more strikingly to the State, as whereas the purpose of the State should be to foster co-ordinated endeavour in the economic sphere, German ingenuity has demonstrated the possibility of evolving therefrom a veritable Frankenstein monster leading to a World-war. The State, as the Germans conceived it, is a highly disciplined community, a self-contained community, a community, therefore, which only allowed foreign commerce so far as it would increase the efficiency of the State as a whole, but it was careful to keep and cultivate within the limits of the State all the necessary means of sustaining State industry, and particularly of sustaining the industries necessary for war. The protective tariff was merely an incident. The ideal includes the general direction of commerce, industry and education by the State bureaucracy, subject to the hereditary autocrat, the use of the upper classes of society as agents in the drill of the lower, universal education, and the provision of such physical necessities of life as secure a general diffusion of efficiency for commercial and industrial, and ultimately for military purposes ; finally, the admission of the masses to so much political power as would make them feel they were associated with the life of the State, and as would prevent the growth of the worst discontent, but yet would always keep them carefully within bounds, so that they could never obtain the control of the Executive, or the direction of the Legislature. Something like this was the ideal of the Germanic State, and that ideal has proved itself in large measure realisable in fact, and, when realisable, to be an extraordinarily effective fighting machine, both in peaceful commerce, and also, as we know to our cost, in actual warfare.

In *ex parte* Weber (1916) the House of Lords refrained from determining the point whether a man could be without nationality regardless of the fact that in Roumania some 7,000,000 Jews

were admittedly in that position. It is submitted that in the last analysis, a nation is but a multiple family or a series of families grouped together for the purpose of protection and that national interests require that the question should be finally settled.

Men do not cease to be men and brothers by anticipating others of their birth and kin in moving west, may be as individuals, or in groups as in the case of the Pilgrim Fathers, or, again, as nations, as in the welter of Asiatic races who migrated to Europe in the earlier centuries of the Christian era.

The term " alien " applied to our American cousins is infelicitous. It does not ring true. The like remark applies to the word " foreigner." A citizen of the United States in coming " Home to England " will not accept the position that he is other than akin to the great dead before whose remains he reverently stands in Westminster Abbey. One needs not, however, to travel out of England to discover parochialism regarding with jealous mistrust visitors from a neighbouring town. We need in our schools and Churches to develop the historic sense and to engage in a more intensive culture of elementary ethnology than that hitherto practised, if we are to emancipate ourselves from the heresies based upon the stubble of sheer ignorance. In this connection, Sir Sidney Low, in a contribution to the *Fortnightly Review*, justly observes that " Our first cloth-workers, silk-weavers and lace-makers were French and Flemish refugees. Two Dutchmen began the manufacture of pottery; a German erected at Dartford the first English paper-mill; Germans and Dutchmen taught us dyeing and bleaching; surveyors and contractors came from Holland to drain our fenlands and build embankments and windmills; French engineers introduced iron castings into the Sussex forges. France, Flanders, Italy, Spain and the Rhineland gave us the finer textiles and manufactured metals which we hardly attempted to produce ourselves until the great industrial era came upon us with a rush a century and a half ago." One perceives in the anti-foreign frenzy much of the old leaven of anti-semitism, prompted by

fear, which not infrequently mistakes assets for liabilities. Anti-semitism is the last flicker of the flame of religious persecution, for it seems incredible that any man speaking the English tongue can imagine that Europe was peopled from nowhere, or can have reached the conclusion that the race of which he may claim to be a member has been segregated from all others. Of all illusions as to race, that of the Jews as to the racial purity of their forefathers is scarcely less interesting than that of a member of the Aryan race who boasts of his European blood, as if it were something very different from that which flowed in the veins of his Asiatic progenitors. Climatic differences, human experiences, beneficial teaching, or the reverse, may profoundly affect the disposition, but the Psalmist spoke the truth in the revelation "a thousand years in Thy sight are but as yesterday"; and we cannot ignore the fact that members of the same race or of races associated together throughout many generations possess the same substratum of human consciousness. Topsy's philosophy that "she grew" does not suffice to explain our position here on this planet to-day.

Nationality is but the present-day expression of the race instinct. It attaches a man to his own people and should assist him in his deeper introspection and reflections as to the past and in stiffening his resolution to attain to the higher possibilities that may await his doing with all his might what his hand may find to do.

The Jews claim that their nationality in Europe is based, as is nationality throughout Asia to this day, on race and religion, and that Napoleon's aim to make nationality and the State coincident is against natural law. Neither could he evolve national consciousness from commercial association of peoples socially segregated, the one from the other. From the time of the expulsion of the Jews from England by Richard I. to Cromwell's time they remained proscribed as a people in this country, and it has only been within living memory that one has seen their political disabilities finally disappear. The Jews in England are, doubtless, sincere in proclaiming their loyalty

to the British Crown, but whilst they remain segregated, consequent on their marriage law, they must remain a " peculiar " or " separate " people. The truth may not be agreeable to some, whilst to the bulk of the Jewish community it is freely recognised and indeed proclaimed with enthusiasm that a Jew is primarily of Jewish nationality and only of British nationality in the sense in which the term is applied to a Canadian, an Australian, or a South African. If such is the position in free England, what must have been the position in Russia. Under the English naturalisation law a Jew born in this country is an English subject, but, touching the position of a Jew born in Poland, Article 25 D. of the Aliens Restriction Order is illuminating, seeing that it differentiates between a Pole by race and a Pole born in Poland not of Polish race, *e.g.* a Jew. It would have been consistent had the Legislature observed the like discrimination as to nationality when framing the Act of 1917. But consistency has not been observed in the application of the Act to the Poles, whose political freedom from Russia, always insisted upon by the British Government since the Congress of Vienna of 1815, was officially proclaimed by Prince Lvoff in the presence of his colleagues in the Russian Provisional Government in March, 1917, the proclamation being enthusiastically recognised by Mr. Asquith in the House of Commons.

The Act provides (sect. 1) that His Majesty may by Order in Council, signifying that a convention has been made with a foreign country allied or otherwise acting in naval or military co-operation with His Majesty in the present war, which imposes a mutual liability to military service on British subjects in that country and on subjects of that country in the United Kingdom, direct that such Act should have effect with respect to the contracting country. The Act is dated July 10, 1917.

The Russo-British Convention dated six days later provides (*inter alia*) as follows :—

1. His Britannic Majesty's Government and the Provisional Government of

Russia will reciprocally bid their subjects inhabiting respectively Russia and Great Britain and belonging to the categories called to the colours in their own country to proceed to their respective countries.

2. His Britannic Majesty's Government undertake as far as possible to effect during the course of the summer of 1917 the transport by sea of the above-mentioned persons.
3. Such of these persons as refuse, after due notice given, to return to their own country, either at their own expense or by profiting by the means set forth in article 2 of the present Agreement, will be compelled to undertake military service in the country of their residence.

   The call of these persons to arms will be effected by the competent authorities of the country of their residence, who will for this purpose apply the dispositions in force in their respective countries as regards absentees.
4. Persons who furnish documents delivered by their diplomatic or consular authorities certifying their exemption from military service will be exempt from the obligation to the call to arms set forth in the preceding article.

Whereas on the British side an Act of Parliament followed by an Order in Council ratifying such a convention was deemed requisite to safeguard British interests, yet on the Russian side, where, consequent upon the change of *régime* following the abdication of the Tsar Nicholas II., scarcely a settled form of government could be said to exist, no Act of the Duma was passed. Previous to the time appointed for the convention to come into force M. Kerensky's Government had ceased to exist.

The expediency of the Legislature delegating legislation to Order in Council was never more open to question than in the present case. Parliament had, however, restricted its approval to cases of " a foreign country allied or otherwise

acting in naval or military co-operation " with the United Kingdom imposing " a mutual liability for military service on British subjects in Russia, and on subjects of Russia in the United Kingdom." The Act does not extend to Ireland. That the position of British subjects in Russia at the time appointed for the Russo-British convention to come into operation was a perilous one under the Bolshevists was obvious, whilst it was notorious that the Russian Army had been disbanded. If, technically, Russia continued allied to Great Britain it clearly did not continue to act in naval or military co-operation with this country. Who were Russian " subjects " in this country within the categories called to the Russian colours in their own country and who had been bidden by Russian authority to return to Russia ? The categories were designed to exclude men of poor physique. The bidding of Russian subjects to return to Russia presented the difficulty that no Russian authority existed, recognised by the British Government, capable of doing the bidding prescribed, nor was there any diplomatic or consular authority qualified to certify the exemption of Russian subjects in appropriate cases. It was in these circumstances that the British Government resolved to enforce the convention and, incidentally, challenged principles of common law embedded in the constitutional history of England and that of the United States, which had been definitely determined in England for upwards of three hundred years, as if they were unsolved problems ; whilst a well-nigh incredible non-acquaintance was exhibited with elementary international law.

A treaty or convention must have a lawful object : " all should be regarded as void which are in any way opposed to the development of the free activity of a nation, or which hinder the exercise of its natural rights." The duration of a convention ceases by the dissolution of one of the contracting States, by the object matter of the agreement ceasing to exist, by full performance, by performance becoming impossible, by lapse of time for which the agreement was made, by *contrarius consensus* or

mutual release. A further cause of the termination of treaty obligations is a total change of circumstances, since a clause "rebus sic stantibus" is said to be a tacit condition in every treaty (Bynkershoek, Quest. sur pub., vol. II., c. 10). This was insisted upon by Russia in justification of her repudiation of the clauses of the Treaty of Paris neutralising the Black Sea and of her engagements as to Batoum contained in the Treaty of Berlin. Pasquale Fiore, Professor of International Law at the University of Naples, Senator of Italy, has placed the international world under a debt of gratitude corresponding to that due to Coleman Phillipson, author of the English Edition of Wheaton's International Law, to whom I express my thanks for invaluable services rendered. Fiore's work has passed through five editions and has now been translated by Edwin Borchard, Professor of Law, Yale University (1918). Fiore states: "It is well to bear in mind that in determining the principles of equilibrium and in regulating the exercise of rights and liberty in the modern State it is necessary to correct many wrong opinions, to destroy many prejudices and to go through different cycles: *e.g.* the preponderance of the sacerdotal caste; class privilege; the autocracy of monarchs; pre-eminence of dynastic politics; sovereignty of the people; and parliamentary sovereignty. . . . Man's rights comprise the rights of freedom and of personal inviolability, the right of choosing his citizenship, renouncing the one he has acquired and of choosing a new one, the right to own property, of liberty of conscience, of free activity and international trade, and the right of emigration. These are the international rights of the human being. . . . A sovereign may properly claim only the liberty and independence compatible with the requirements of international society. For that reason he must so exercise his powers as not to infringe the international rights of man or of the community, or the general requirements of international society."

Allegiance.

What is the measure of allegiance due from a British subject to the King of England? What is, or rather was, the corresponding claim on the part of the Czars of Russia towards Jews and Poles who or whose ancestors were born in Russian territory, and how far did such claim operate outside of their territorial jurisdiction to entitle them, and the Revolutionary Governments that have succeeded them, to bind the refugees by convention? What the measure of allegiance due from an Englishman is, can best be examined by considering the position that arose in the reign of James I. when the American Colonies were established.

Matthew Page Andrews, the Historian, in an article contributed to *The Landmark* (the organ of the English-speaking Union) for July last, observes: "In London, on the last day of December, 1621, James I. visited Whitehall. There, in the presence of the privy council and the judges, the King tore from the Journal of the House of Commons that page on which the representatives of the people had declared: 'That the Liberties, Franchises, Privileges and Jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England; that the affairs of the King and the State, of the defence of the realm, and of the Church of England, the making of laws, the redress of grievances, are proper subjects of debate in Parliament.' . . . . In England the popular liberties of speech and action thus temporarily suppressed were recovered, to become vastly enhanced and enlarged; but the page of the Journal of the British Parliament so ruthlessly destroyed by James I. is typical of the suppression of historical evidence which must now be restored in order that we may realise the meaning of events more or less misunderstood for centuries. . . . The King not only suppressed historical records, but put forth for publication distorted accounts of contemporary events which were as unduly favourable to autocratic procedure on the one

hand as unjust to the progress of representative democracy on the other. Historically, this misrepresentation of the facts, due to the original Royal control of the printed word, has persisted for a period of three hundred years and more. In the future, therefore, the interpretation of the history of Anglo-American beginnings must set forth *the all-important origin in America of actual self-government, as planned by a far-sighted group of Englishmen in the mother country, and established by them at Jamestown by means of the charters of* 1609 *and* 1612, *followed in* 1619 *by the assembling of the first Colonial Parliament*, which of itself furnishes the final vindication of the faith of these Founders of English settlement in the New World. . . ."

Page Andrews adds: "It is especially right and proper that Americans should acclaim the statesmanship of that group of patriotic Englishmen who, meeting under the shadow of a threatening tyranny, risked their lives and fortunes to establish a free popular State in America, where the inhabitants were to have no government 'put upon them but by their own consent.'"

The Department of Government in Harvard University has inaugurated its series of Political Classics with the "Political Works of James I." (Milford), reviewed in the Literary Supplement of *The Times* of August 21 at considerable length under the heading of "The Divine Right of Kings." The reviewer remarks that the year 1918 has seen even more crowns topple into the dust than in 1848 and adds: "probably it marks the definite passing away of that political theory for which the Stuarts stood in Great Britain, the Bourbons in France, and the Hapsburgs and Hohenzollerns in Central Europe. . . . Whilst James I. did not originate the theory of the divine right of kings, which had long been a commonplace of scholastic philosophy, the cult was increased by the revival of Roman civil law and the reduction of papal jurisdiction—the disruption of the Empire and papacy paved the way for the irresponsible national king. . . . The Church claimed at times the major voice in the election (of kings) and popes might depose the king or at least

release his subjects from their allegiance. The Reformation deprived the papacy of this right in England, but instead of destroying it, transferred it to Parliament; and even Henry VIII. regulated the succession by Parliamentary statute, constraining his Church to agree. . . . When Convocation sought to embody the doctrine in a canon in 1606 James objected that it would bind ecclesiastics to obedience to any unsuccessful usurper. He always had probable rivals and possible tyrannicides in mind. The fate of earlier Stuarts and of his contemporaries Henry III. and Henry IV. of France and William of Orange defied oblivion; and James wanted a sounder doctrine than one which left battle and murder to prepare the way for divine ordination and protected the happy upstart with the sanction of passive obedience. . . . He was the most egotistic of kings, and it was the person of the monarch rather than the institution which he sought to invest with divine sacrosanctity. . . . Rivals might impugn his right on the ground that he was born an alien and was, therefore, precluded from the Throne by the English common law, or that Parliament had by an unrepealed statute given its sanction to Henry VIII.'s preference for the Suffolk line; and James sought a sanction in right that should be superior to the manufactured laws of man. He found it in the doctrine of heredity, or, more strictly speaking, primogeniture. . . . Neither Popes nor Parliament could deprive the first-born of his pride of place and give it to another, nor could they keep him out of his succession, in spite of statute and of common law. . . . It was a Protestant doctrine. . . . . It deprived the papacy of a large sphere of its jurisdiction, and if it made the King irresponsible to his people, it also made him irresponsible to the Pope. . . . The Crusades were, he thought, 'the device and invention of the Pope, whereby he might become enfeoffed in the kingdoms of Christian Princes.' . . . Men might have acquiesced in James's dictum that 'as for the absolute prerogative of the Crown, that is no subject for the tongue of a lawyer, nor is lawful to be disputed,' but they could not stomach his contention that God had

vested for ever this absolute prerogative in James I. and his family."

The common law of England in rewarding research ever illuminates the path of the student. In not a few instances inquiry suffices to correct the errors contained in text-books, often compiled by writers content to take their law not from the common law, but from the interpretations placed upon it by yet earlier writers.

By the common law is understood "such things as were law before any statute made in that point that is in question" ("Doctor and Student," Dial. 2, C. 2). But the term common law is also used in a more limited sense, viz., as *consuetudines* rather than *leges*, the rules of law which were not created or declared by express enactment but developed by the Courts from principles founded in the "custom of the realm" or deemed so to be, "such laws as were generally taken and holden for law before any statute was made to alter the same" (*Termes de la Ley, s.v.* Common Ley).

The customs which spring from the notions of right and wrong of a rude and simple community form the groundwork of the law of Scotland, as of every other nation. In the earliest form in which it has been transmitted to us, the law of Scotland bears a close analogy to that of Anglo-Saxon England and of the other nations of Europe which were peopled by the Teutonic races.

The source of American law is the common law of England. When the Governments of the several American colonies on the Atlantic coast became in 1775 and 1776, or thereabouts, independent of the mother country, they each adopted the common law of England as it then existed, and had theretofore been administered from the foundation of the colonies by the Colonial Courts as the common law of the land.

Sir John W. Salmond, Solicitor-General in New Zealand since 1910, in an article contributed by him to the *Law Quarterly Review* in 1901, remarks *apropos* of non-resident aliens, such as I claim the Poles and Jews of Russian "birth" who had left that country to be, "are not within the power and

jurisdiction of the (Russian) State ; they owe no obedience to its laws, nor fidelity to the Government ; it is not for them or in their interest that the State exists. . . . The notion of the State as an incorporate community is to this day unknown to English law ; there is no *respublica* of which men can be members or citizens. The Crown is a corporation in law ; but the nation, the aggregate of the subjects of the Crown, has no recognised legal identity or personality. There is in law no *populus Britannicus*, as there was once a *populus Romanus*. Roman citizens are men bound to one another by the personal bond of a fellow-membership of one body ; but British subjects are men bound, not to one another, but to a common superior. The term citizen connotes the privilege of common membership of one State ; but the term subject connotes the burden of a common subjection to one lord and king.

"The Roman Empire was filled with inhabitants who were *peregrini* and not *cives*, though they belonged to no other State than Rome itself. Roman law recognised voluntary expatriation constituting the law of *civitas* or statehood. . . . A subject who is a citizen may be distinguished, when distinction is necessary, as a natural subject. One who is not a citizen may be termed an alien subject. The disuse of the term citizen is significant of an important change of ideas. It is the direct outcome of the substitution of feudal for Roman conceptions of law and politics. . . . The consistent tendency of legal development is to minimise the peculiar rights and liabilities of subjects and to make residence rather than citizenship the essential and sufficient title of State membership. The acquisition and loss of citizenship are being gradually made easier, while the legal effects of such acquisition and loss are being gradually made less. The present state of things is, indeed, a compromise between two fundamentally different ideas as to the constitution of a political society. Citizenship and its remaining privileges are the outcome of the primitive conception of the State as a personal and permanent union of determinate individuals, for whose exclusive benefit the laws and government of

the State exist. Residence, regarded as a title of membership and protection, is the product of the more modern conception of the State, consisting merely of the inhabitants for the time being of a certain territory. The personal idea is gradually giving place to the territorial, and the present twofold title of membership is the outcome of a compromise between these two co-existent and competing principles."

President Wilson, in "The State," contrasts the Teutonic system of allegiance with the Roman —" the former being essentially personal, the latter essentially impersonal. Allegiance was due to the King in the case of the Teuton and to the State in that of the Roman. The feudal conception of sovereignty was that of ownership, an item in family assets." Both in England and in Russia the Teutonic rule applies.

The following issues (*inter alia*) claim attention :—

(*a*) The measure of allegiance due from a subject of the United Kingdom to the King.

(*b*) The measure of allegiance due from a Polish Jew, who had withdrawn himself from the territorial jurisdiction of Russia during the Imperial *régime* and had become domiciled abroad, to the ex-Czar Nicholas II.

(*c*) Assuming allegiance to have existed at the abdication, was it personal to the Czar, and was it released by his abdication ; alternatively, could it be transferred to the Russian State in the absence of consent on the part of men domiciled abroad, claimed to be affected ?

(*d*) Whether, considering that questions of nationality and allegiance are regulated under international law by municipal code, such municipal code is relevant for determining the status of a citizen who has withdrawn from the sphere in which it operates ?

(*e*) Whether there is any authority vested in a State which neglects to afford any protection to or to exercise any autho-

> rity over a man who has withdrawn from its jurisdiction to conscript him into the armed forces of another State under the formula of a convention ?

The Greeks had no special legal form for the process of emancipation and consequently no legal differences in the status of freedmen, such as it is sought to raise, or create, in the case of expatriation. "Among the Romans emancipation was a lucrative proceeding for the State, as a tax of 5 per cent. on the value of a slave was paid on his being set free, when he was designated libertus in relation to the liberator and libertinus in legal relation to the State. Allegiance was the mutual obligation which continued to exist between the freedman and his liberator, based on the fact that the freedman belonged to the family of his patron. The patronus was bound on his side to care for his libertus, and in consequence either retained him altogether in his home and service, or supplied him with a farm and capital to start it; buried him in the family tomb after his death, and took charge of his children, if not grown up. On the other side the freedman was bound to support his patronus, in case of need." ("Seyfert's Dictionary of Classical Antiquities," p. 242.)

The step between emancipation and allegiance is but a short one, the reciprocal relationship between patron and freedman and that between king and subject being present in each, if not expressed in identical terms. The service due, whether to patron or king, being of a personal nature, was incapable of being transferred to another by assignment.

Stubbs (Vol. I., p. 166) in quoting the oath of allegiance in the time of King Edmund (943) remarks that it was no unconditional promise "for the oath taken by the man to his lord," specially adds, "on condition that he keep me as I am willing to deserve, and fulfil all that was agreed on when I became his man and chose his will as mine." In his Select Charters, p. 79, Stubbs adds that William the Conqueror, having been elected by the Witan, was crowned "after making the usual compact with the nation." Stubbs (Vol. I., p. 569) further cites Magna

Charta (1215) establishing the contractual relationship of King and people (reaffirming the Charter of Liberties granted by Henry I. in 1100) the Barons having first sworn to withdraw their allegiance were John to refuse to sign. The last clause of Magna Charta contains the enacting words, "we will and finally enjoin" and the oath to be taken on the part of the King and on the part of the Barons, "that all these articles shall be observed in good faith and without evasion of their plain conclusion."

A new era opened for England on the accession of James VI. of Scotland to the English throne as James I. The Renaissance, the Reformation, the discovery of the New World, the adoption of printing, the repudiation of serfdom and the feudal system, the rejection of the claim of the Tudor monarchs to absolute sovereignty and the reversion to the common law doctrine of constitutional monarchy, and what may be termed the awakening of the soul of liberty, were accomplished facts. The Commons were never more resolved to insist on the liberty of the subject. King James had sought to introduce the Tudor conception of sovereignty in the tract issued by him entitled "The True Law of Free Monarchies," in which he wrote :

> "A free monarchy, the only real monarchy, differs from elective kingship or the authority of any republican magistrate, however exalted. A monarch in the proper sense is created by God and accountable to God only. He is above the law, as both its author and the giver of strengh thereto. All other authorities in the State derive their power from him, and owe him absolute obedience.
>
> "A good king, indeed, acknowledges himself ordained for the people, and only a tyrant thinks his people ordained for himself. But the rebel is always a wicked man. He cannot be justified by appeal to *an original compact between king and people*, for no man can be judge in his own cause. Nor can he be justified in alleging duty to the commonwealth, for a bad king is not so bad as anarchy, and in any case evil is not to be done that good may follow."

The English people, however, insisted that James could either recognise the compact of allegiance, constituting a reciprocal bond between king and people, or abdicate. At this juncture, Dr. Cowell, Reader in Civil Law at Cambridge, published a law dictionary entitled "The Interpreter," in which he asserted that the King of England was an absolute king, and therefore had plenary legislative power. The Commons were furious at what they rightly regarded as an assault on the then constitutional position of the people and solemnly denounced "The Interpreter," whereupon James concurred officially in condemning the work and ordered its suppression. When James proposed to Parliament that it should naturalise his Scotch subjects as English subjects, the Commons showed little disposition to comply; and it was then (1608) that he had recourse to obtaining a decision in his favour in the Calvin case from the Court of Exchequer Chamber, referred to by Coke as the most memorable trial which down to that time had ever taken place in Westminster Hall. The case was heard by Lord Chancellor Ellesmere and twelve judges. The declaration sought, viz., that the *post nati*, or Scotchmen born after James's accession to the English throne, owed allegiance to James, as King of England, was then made, it being added that the liege was a personal and reciprocal tie as between king and people (in contradistinction to State and people), and imposed reciprocal obligations, the king being required to provide his subject with maintenance and protection, whilst the subject was under the corresponding duty of rendering suit and service to the king. The decision, coming as it did with the final disappearance of serfdom from England, takes very high rank among all English-speaking peoples. It is significant that at this time the first settlement of Englishmen in America occurred, and that such settlers and their descendants have never wavered in their insistence upon the reciprocal character of allegiance.

In England we are accustomed to assume that allegiance recognised the doctrine of the divine right of kings. Such is contrary to the

fact, as under the common law English kings were so restricted in their authority that they were not even permitted to abdicate, save with the consent of Parliament. Edward II. was deposed ; a Parliament having been irregularly summoned, articles were drawn up declaring him unfit to reign, and Commissioners were sent to request his assent to his son's succession. This he gave, and Sir William Trussell, as proctor for the whole Parliament, renounced their allegiance (Stubbs, c. xvi. 255). Richard II. was induced to execute a deed of resignation in which he absolved all his people from the oaths of fealty and homage and all other bonds of allegiance, loyalty, and lordship by which they were bound to him ; but this was not thought enough, and Parliament proceeded to draw up articles against him, which the Estates voted were sufficient grounds for deposing him. Then Henry of Lancaster claimed the Crown and was accepted by Parliament, and Commissioners were sent to signify to Richard his deposition, and renounce their allegiance (Stubbs, c. xvi. 269 ; c. xviii. 302). It was debated in the Convention Parliament at the Revolution whether the throne was vacant between Richard's resignation and the enthroning of Henry IV. In the case of James II. the Convention resolved that " King James II., having endeavoured to subvert the Constitution of the kingdom by breaking the original contract between king and people, and having, by the advice of Jesuits and other wicked persons, violated the fundamental laws and withdrawn himself out of the kingdom, has abdicated the government, and that the throne is thereby vacant." When James II., after throwing the Great Seal into the Thames, fled to France in 1688, he did not formally resign the Crown, and the question was discussed in Parliament whether he had forfeited the throne, or abdicated. The latter designation was agreed on in a full assembly of the Lords and Commons, met in Convention, in spite of James's protest. The Scottish Parliament pronounced a decree of forfeiture and deposition.

If in England allegiance under the common law sat very lightly on the shoulders of the

subjects, yet in Scotland the position of kings was even less enviable. The Scotch made war upon most of their kings and put to death many. To mention their treatment of a single dynasty, they murdered James I. and James III. They rebelled against James II. and James VII. They laid hold of James V. and placed him in confinement. Mary they immured in a castle and afterwards deposed. Her successor, James VI., they imprisoned ; and prior to his accession to the English throne, they led him about the country, and on one occasion attempted his life. Towards Charles I. they showed the greatest animosity, and they were the first to restrain his mad career. Three years before the English ventured to rise against that despotic prince, the Scotch boldly took up arms and made war on him (Buckle's "History of Civilisation in England," Vol. III., p. 3).

The case of Richard II. established that the release of a subject from his allegiance to his king was not effected by the act of the king, but by the renunciation of Parliament, whilst the case of James II. justifies the conclusion that abdication can be inferred from a ruler's conduct, it being unnecessary that he should sign any formal renunciation. The terms of the abdication of the Czar Nicholas II. in favour of his brother, and later on of the abdication of the Grand Duke, do not make express mention of allegiance ; but it is interesting to recall that the abdication of ex-Kaiser William II., announced on November 9 last, was followed by his signature to a formal deed of abdication, after he had become a refugee, in which deed his former subjects are expressed to be released from their allegiance.

The following is the text signed by the Ex-Kaiser :

"I hereby renounce for ever the right of the Prussian Crown and the German Imperial Crown attached thereto. At the same time I release all the officials of the German Empire and Prussia, as well as all officers, non-commissioned officers and men of the Navy, the Prussian Army, and the troops of the allied continent, from the oaths which they have

sworn to me as their Emperor, King and Master. I expect from you that, until the re-organisation of the German Empire, you will keep the present rulers of Germany and protect the German people from the dangers of anarchy, famine and foreign rule.

"Signed and sealed by our hand,
"Amerongen, 21 Nov., 1918.
"WILHELM."

Not only does the common law recognise the right of subjects to revolt against a despotic king and to demand his abdication, but it assents to the right of the subject to withdraw from the king's dominions. It will be recalled that the claim made by Charles I. to prevent Hampden leaving the realm was one of the contributory causes of the Great Rebellion.

In Vol. I. of *Leaders and Landmarks* there occurs the following passage dealing with the contractual relationship between King and People: 'The action of Philip of Spain in proscribing and banishing William the Silent on the 15th March, 1580, was followed by the States-General of Holland throwing off their allegiance on 26th July, 1581: the divine right of kings was set aside, a contract between ruler and people was assumed, and Philip was rejected for failure to fulfil his obligations. The following resolution was approved by the States-General: "All men know that God appoints a king to cherish his people as a shepherd his flock. When he grinds down his people, overthrows their ancient liberties, and treats them as slaves, he is no prince, but a tyrant. Then may the estates of the land renounce him and put another in his place."'

John Stuart Mill in "Considerations," p. 296, comments: "One hardly knows what any division of the human race should be free to do, if not to determine with which of the collective bodies of human beings they chance to associate themselves." The seat of authority in questions affecting the evolution of the human race in which the freedom of the subject plays a determining factor reposes, I submit, in higher hands than our own. The legendary story of Canute bidding the waves to retire has, and has had,

its counter-part in the fruitless endeavours of rulers to impose their will on men beyond the scope of their jurisdiction—a little brief authority within territorial prescribed areas.

Allegiance as authoritatively declared and limited in the Calvin case is not identical with indelible or perpetual allegiance. Far from constituting a reciprocal tie or bond between king and subject, it ignores the contractual basis of relationship and is an adjunct of serfdom, holding, as Bossuet declares, that kings may behave like wolves, but that subjects must continue like sheep. It will be perceived that in such a conception there is no room for the sovereignty of the people. *Pace* English textbook writers, who do not tire of copying one another in quoting "*nemo potest exuere patriam*," supposed by them to be still in force, I would remind such that in 1868 it was referred to a Royal Commission of England's most eminent jurists and statesmen, who unanimously reported that the doctrine "once a subject, always a subject," was "neither reasonable nor convenient," and that "it was at variance with those principles on which the rights and duties of a subject should be deemed to rest." Mr. Lothrop, United States Minister to Russia, in a despatch to M. de Giers, April 24, 1887, writes, "Under this decisive condemnation the doctrine, as your Excellency is aware, disappeared from British law."

It is difficult to escape the conclusion that the word "expatriation" is occasionally employed in the sense of forfeiture of the right to national protection instead of in the full sense of change of home and allegiance. Much confusion results from not keeping this distinction in mind. There is, says Moore ("International Law Digest," Vol. III., p. 711), "no mode of renunciation by a citizen of his citizenship prescribed. But if he emigrates; carries his family and effects along with him; manifests a plain intention not to return; takes up his permanent residence abroad, and assumes the obligation of a subject to a foreign Government, this would imply a dissolution of his previous relations with the United States." The natural unwillingness of any State to

assume responsibility for the protection of a newcomer accounts, it seems to me, for the contention insisted upon by some writers, that the act of expatriation, which is the voluntary act of the individual, should not be deemed complete until that individual has been accepted by the State to which he seeks to adhere. I personally fail to discern the sequence of thought in the argument, and this, the more particularly, when it is noted that between the act of expatriation in the United States and the acquisition of a certificate of naturalisation an interval of five years must intervene. Naturalisation is the highest, but not the only, evidence of expatriation. A continuous residence under a foreign jurisdiction of more than the lifetime of a generation, without some acts of allegiance and the discharge of some of the duties of a citizen, would seem to raise a presumption of renunciation of citizenship. Chief Justice Marshall, speaking for the United States Supreme Court in 1873, lays it down "that voluntary expatriation is to be inferred not only from an open act of renunciation but from other circumstances, as, for instance, a residence in a foreign land so constant and under such circumstances, that a purpose of a change of allegiance may be reasonably assumed." He adds, "each case as it arises must be decided on its merits." President Grant, in his annual Message to Congress in 1873, declares, "We have agreed that residence in a foreign land, without intent to return, shall of itself work expatriation. We have agreed in some instances upon the length of time necessary for such continued residence to work a presumption of such intent."

It will be recalled that the Declaration of Independence enumerates as among the "unalienable rights" with which "all men" are endowed by their Creator "life, liberty, and the pursuit of happiness." Mr. Seward, Secretary of State, in writing to Mr. Wright, Minister to Prussia, December 2, 1865, remarks: "The United States have accepted and established a Government upon the principle of the rights of men who have committed no crime to choose the State in which they will live, and to *incorporate themselves* as members of that State, and to

enjoy henceforth its privileges and benefits, among which is included protection. This principle is recommended by sentiments of humanity and abstract justice. It is a principle which we cannot waive. *It is not believed that the military service which can be procured by any foreign State in denial of this principle can be important or even useful to that State.*"

It is travelling back a long time to refer to the 470 years' sojourn of the Jews in Egypt, but no one would argue that they returned to Palestine as Egyptian subjects owing perpetual allegiance to the Pharaohs, and as such liable to be conscripted under a convention made between Egypt and some third country where some of their number may have been resident on the outbreak of war.

In *Caignet* v. *Pettit*, Supreme Court of Pennsylvania (1795), *vide* Dallas, 234, it was held that a Frenchman resident in San Domingo had an undoubted right to dissent from the French Revolution and to refuse allegiance to the new Government and withdraw from the territory of France. Mr. Olney, United States Secretary of State, in a despatch to the Chargé d'Affaires at St. Petersburg, November 4, 1895, writes that the doctrine of expatriation had been generally adopted by all European States except Russia and Turkey.

For the purposes of the Russo-British Convention the law of England and not the municipal code of Russia applies for determining its validity. But, at the outset, the reader is confronted with a forest of difficulties. First, he will assume with me that the Convention extends only to such men as were Russian subjects at the date of signature, viz., July 16, 1917. To determine this point one needs to grasp that the frail conglomeration of Russian nationality, without reckoning Poles, Jews, and other foreigners comprised in the term Russia, numbers more than seventy, and that whereas from 1238 Russia bowed beneath the Tartar yoke for two centuries, yet during the seventeenth century it was without a reigning dynasty or a national government. Russia is a fact that humanity has surely had time enough to grasp, and yet Western Europe, as a rule, sees

only in Russia her government *de facto*, or *de lege*, as the case may be.

Whereas prior to October, 1915, the power exercised by the Czar under the fundamental laws was described as "autocratic and unlimited," yet after that date the word "unlimited" vanished, but the imperial title was still "Emperor and Autocrat of All the Russias." M. Stolypin defended the ukase of July 2, 1907, which, in flat contradiction of the fundamental laws, altered the electoral laws without the consent of the Legislature on the ground that what the autocrat had granted the autocrat could take away. Russia as a geographical expression connotes not a nation, but a group of nations, with the corresponding difficulty of co-ordinating the relationship between races and peoples living great distances apart. It should afford some idea of the vastness of Russian territory to mention that it includes seventy-eight governments, eighteen provinces, and one district of widely varying levels of civilisation. One may well ask by what standard should inhabitants be judged by the British Government when the Russian Czars frequently varied those which they employed!

Pobyedonosteff, the Procureur of the highest Ecclesiastical Court of Russia in the reign of Alexander III., and appointed by that Ruler tutor to his ill-fated son Nicholas II., was the Russian Machiavelli. He strained his beliefs to an extent which his reason rejected, in order to gain power through his pupil, and influence the fate of Russia. In his volume of "Reflections" he places on record his judgment on the civilisation of the West. He remarks: "Parliament is an institution serving for the satisfaction of the personal ambition, vanity and self-interest of its members. The institution of Parliament is indeed one of the greatest illustrations of human delusions. . . . On the pediment of this edifice is inscribed 'All for the public good.' This is no more than a lying formula. Parliamentarism is the triumph of egoism—its highest expression."

Russia was characterised by Sir Robert Morier to Sir Mountstuart Grant Duff in 1888 "as a great bicephalic creature, having one head

European and the other Asiatic, but with the persistent habit of turning its European face to the East and its Asiatic to the West." If history familiarises us with the features of the Russian Czars, the Revolution in Russia, now proceeding, affords us all too much knowledge as to the gentle habits of the Slavs towards alien peoples or outlanders.

Prince Gortchakow declined the proposal of the United States Government, made in 1867, to conclude a convention of naturalisation with that country on the ground " that it is the policy of Russia to forbid the return of her subjects who might choose to abandon her protection and escape from their allegiances " (Moore, Vol. III., p. 622). This outspoken utterance is certainly to be preferred to the regulations subsequently issued by the Russian Government to their consuls abroad, referring nominally to foreign Jews, but in practice extended to all Jews, not to *visé* passports to admit of the applicants visiting Russia. Russian history contains no blacker chapter than that of her treatment of the Jews under the 1,000 penal laws discriminating against them. That any Russian Government should have had the effrontery to claim the perpetual allegiance of men thus ostracised seems incredible. Of settled purpose they were by economic pressure, relentlessly applied, driven out of Russia by hundreds of thousands, occasioning a vigorous protest from the United States Government that so vast an influx of emigrants unsettled labour conditions in that great Republic. What irony indeed, that when called to account the Imperial *régime* should answer that they had left without leave ! They certainly carried little with them but their will to live and their loyalty to their religion. In England no very warm welcome was accorded to the fugitives. The Hon. H. Lily Montagu, in an article, " The Russian Jew and his Relations to the Emancipated Jew," which appeared in last April's *Cornhill Magazine*, pleads their cause in eloquent words. She writes, " these people would appear at this moment to represent one of the most hated types of humanity." She then proceeds to examine their psychology, and comments that

" in order to understand the phenomenon it is necessary to go back a decade of years and learn how the Russian Jew lived and worked when he first came to these hospitable shores, where we English are inclined to think that his gratitude to us for his reception must be without end." She adds : " He came from a society in which force and money controlled life. He had spent his time in evading death. He was surrounded by those who refuse to acknowledge his right to live in the country of his birth. . . . He is hated by non-Jews and despised by his fellow Jews. . . . When he walks abroad to-day he feels he is walking among enemies who would stone him if they dared. . . . The public would be surprised to find that certain Jews from Russia refined in the school of suffering, strengthened by fine intellectual education, purified by self-sacrifice, spiritualised by devotion to an ideal, have supplied our country with some of its best inspiration." The writer adds that the Russian Jew on reaching England found himself " still in the familiar Jew's pale. The English people ignored him. He assumed that they hated him. He certainly had no indication that they loved him. . . . To-day the English public are indignant with the Russian Jew because he shows no inclination to give his life in enthusiastic appreciation of her great national ideals *before* he has come *under their influence*. England gave him an asylum, but in no sense offered to share her life with her alien guest. She was at no pains to avoid showing him how she despised him. . . . Only fools could expect him to incur pain and suffering for Russia—a country which had hitherto expected nothing of him and which is no concern of his."

According to Article 325 of the Russian Penal Code, any person who having gone abroad takes service there without the authority of Government, or who becomes naturalised, incurs the loss of all his civil rights and perpetual banishment. If he returns to Russia he is liable to be transported to Siberia. Under Article 326, the wife of a person deprived of civil rights has the right to claim a divorce. Furthermore, the culprit loses his paternal authority over his children born prior to his

condemnation. I do not recall any case where Russia has extended protection to a Jew who left Russia without licence.

The social rights of Jews in Russia are regulated by special ordinances in which they are designated "aliens." *Vide* "Law upon Status," vol. ix., note 7, s. 835, 1876.

Two cases have been cited as the ground that domicile may or should supplement and indeed supplant allegiance as the test of national character. One of these cases is that of John S. Thrasher, the other that of Martin Koszta (Moore, Vol. III., p. 818). Mr. Webster, United States Secretary of State, writing on July 5, 1854, in the former case, said :

> "The general rule of the public law is, that every person of full age has a right to change his domicile; and it follows that when he removes to another place, with an intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicile. . . . The Supreme Court of the United States has decided that a person who removes to a foreign country, settles himself there, and engages in the trade of the country, furnishes by these acts such evidences of an intention permanently to reside in that country, as to stamp him with its national character. . . . No Government has carried this general presumption further than that of the United States, since it is well known that hundreds of thousands of persons are now living in this country who have not been naturalised according to the provision of the law, nor sworn any allegiance to this Government, nor been domiciled amongst us by any regular course of proceedings. What degree of alarm would it not give to this vastly numerous class of men, actually living amongst us as inhabitants of the United States, to learn that, by removing to this country, they have not transferred their allegiance from the Government of which they were originally subjects to this Government ? . . . In questions on this

> subject, the chief point to be considered is the *animus manendi*, or intention to continue resident; and this must be decided by reasonable rules and the general principles of evidence."

Moore, in commenting on the above remarks, "These passages certainly involve no new doctrine. They merely lay down the familiar and fundamental rule of the supremacy of the territorial jurisdiction, with an accentuated affirmation of its peculiar applicability to permanent dwellers."

In the case of Martin Koszta, Mr. Marcy, in his trenchant despatch of September 26, 1853 (Moore, Vol. III., p. 826) remarks:

> "The conflicting laws on the subject of allegiance are of a municipal character, and have no controlling operation beyond the territorial limits of the countries enacting them. . . . Koszta being beyond the jurisdiction of Austria, her laws were entirely inoperative in his case. The law of nations has rules of its own on the subject of allegiance, and disregards, generally, all restrictions imposed by municipal codes. . . . To surrender political offenders is not a duty; but on the contrary, compliance with such a demand would be considered a dishonourable subserviency to a foreign Power, and an act meriting the reprobation of mankind."

Mr. Marcy, after referring to a decree of the Austrian Emperor in similar terms to those employed in Article 325 of the Russian Code, previously cited, writes:

> "Koszta had left Austria without permission, and with the obvious and avowed intention never to return; he was, therefore, within the strict meaning of the imperial decree 'an unlawful emigrant.' He had incurred and paid the penalty of that offence by the loss of all his civil and political rights. . . . It seems to have been the very object of the Austrian decree to dissolve the previous political connexion between the 'unlawful emigrant' and the

> Empire. In Koszta's case it was dissolved.
>
> "The undersigned is brought by a fair application of sound principles of law, and by a careful consideration of the facts, to this important conclusion."

Mr. Marcy then refers to the error of assuming that a nation can properly extend its protection only to native-born or naturalised citizens. He remarks :

> " This is not the doctrine of international law, nor is the practice of nations circumscribed within such narrow limits. . . . It is a maxim of international law that domicile confers a national character ; it does not allow anyone who has a domicile to decline the national character thus conferred ; it forces it upon him very much against his will, and to his great detriment."

I quote the closely-reasoned despatch of Mr. Marcy for the reason that it furnishes an authoritative statement of the American law of civil status for inter-State contractual purposes of an emigrant Pole or Russian Jew who may have established a domicile in this country.

Those desirous of pursuing the enquiry further as to the status of Russian Jews in Russia will find the subject exhaustively dealt with in *Les Juifs Russes* (Errera), pp. 103–9 ; " The New Exodus " (Frederic), p. 248 ; " Report of the United States Commissioners of Immigration " (Weber and Kempster), pp. 149–165 See also Anatole Leroy-Beaulieu's " Israel Among the Nations " ; " The Russian Government and the Massacres " (Semenoff), published by John Murray in 1907 ; and Professor Israel Friedlander's more recent work, " The Jews of Russia and Poland," published by Putnam in 1915, following upon his translation of the very elaborate history of " The Jews in Poland and Russia," written in Russian by S. M. Dubnow. The crushing evidence furnished by Prince Urusooff in his famous speech in the Duma, accusing the Russian Government of complicity

in the pogroms is based upon documents of undisputed and indisputable authenticity. A higher claim may not be advanced by a foreign ruler to the allegiance of a foreign subject resident in England than that recognised by English law. Frederic, writing in 1902, states that for 10 years Russia had "surrendered itself to the engulfment of the wave of barbarism." He refers to the Jews as "a whole race hunted from its homes, despoiled of its possessions and hounded by the Cossacks," and continues "the most industrious gleaning cannot hope to gather the thousandth part of the past 12 months' tragic facts. The scope of the figures staggers the imagination. More families, for example, have been affected by this new and savage enforcement of Ignatieff's May laws and the added ukases than were called upon to mourn the loss or wounding of relatives on either side during the great American civil war. . . . When Aksakoff called out, 'Para-domoi!'—it is time to get home—every Russian knew him to mean that it was time to give over the pretence of aping Western Europe, that it was time to throw to the winds the effort to appear civilised . . . . to frankly relapse into Slavonic barbarism. . . . One must realise that (in Russia) the administrative power is above the law. . . . In Anglo-Saxon countries when we speak of a law abiding community, we mean that the people therein obey the laws and give the officials appointed to administer the law a minimum of trouble. That the people obey is taken for granted. It is the officials who do not observe the laws, but who instead use the vast and conflicting jumble of ukases, decrees, and Ministerial instructions as a general basis for doing whatever they want to do." Leroy-Beaulieu remarks on "holy, Orthodox Russia, half Oriental, half Asiatic, which endeavours to find its national unity, which regards the Catholic and the Lutheran with little more favour than the Israelite and which differs from us in all its conditions, be they economic, political, religious or social." Friedlander comments that "the Jews at the beginning of the twentieth century continued to endure all the agonies of the Middle Ages. The Jews," he remarks "are neither

a part nor a product of the Russian Empire, which almost from its very inception down to this day has systematically shut its gates to them. The Empress Elizabeth issued a decree in 1741 ordering the immediate expulsion from our entire empire . . . . of all Jews, both of the male and female sex, of whatever occupation or calling. . . . Both economically and spiritually, the attitude of Russia towards the Jews has had but one goal; the ultimate annihilation of Judaism." Speaking of the reign of Alexander III. (1881–1892) Friedlander comments: "A third of Russian Jewry was doomed to immigration, another third condemned to starvation and the last third to be saved by conversion. . . . Nicholas II. waged war to the knife against his Jewish subjects. The primitive riots at the close of the nineteenth century fade into insignificance before the well-organised butcheries at the beginning of the twentieth century. . . . Jewish rightlessness is spun out into a gigantic cobweb to ensure the destruction of the victim."

Self-preservation is the innate and supreme fundamental right of man. The claim of any ruler or State to a proprietary right in men as chattels to be bartered away to another ruler or State by convention is alike contrary to English common law and the law of nature.

In international law the doctrine of recognition occupies what may be termed a key-position determining the relationship between State and State and that between the State and individuals. In the absence of recognition a *de facto* Government set up in one country is treated as non-existent by the *de lege* Government of another. A veritable transformation scene, for instance, would result were the Government of this country to recognise the present *de facto* Bolshevist Government of Russia, as, whereas at present we are admittedly at war, not with Russia as a State, but with the Bolshevist Government of Lenin and Trotsky, yet, were the Bolshevist Government recognised, war relations with Russia as a State would certainly result, and Russian alien friends would become alien enemies. The instances of Cromwell, Napoleon, and the Confederate States

of America will occur to the reader as illustrating the importance of recognition, while Poland and Afghanistan are of more recent date. Sometimes there has been a long interval between the formation of a State and its recognition by other Powers, notably by those which have some direct interest in the matter. The Swiss Confederation was independent, in fact, for almost two centuries before it was officially recognised as such by the Empire in 1648 ; and it was only in that year that Spain recognised the independence of the northern Low Countries. It was not until 1668 that Spain recognised the independence of Portugal, which had been separated from her since 1640. Greece was recognised by the guaranteeing Powers in 1827 ; by Turkey in 1832. Belgium, constituted in 1831, was not recognised by Holland till 1839. Spain and Portugal recognised the States of Latin America many years after the United States and this country had done so. England recognised the United States only in 1782, and it never recognised the Napoleonic kingdoms of Italy and Westphalia.

The map of Europe at the signing of peace at Versailles presents many alterations from that before the war, but the measure of these should be equalled, if not exceeded, by that fuller measure of the liberty of the subject demanded by the nations.

The withholding of recognition of subjects by Consuls acting on instructions from an unprincipled Government has brought black ruin into the lives of many. Hitherto there has been no appeal from this wrong, but it may be hoped that the evolution of the international conscience may lift human rights to a higher plane, where just recognition will be accorded to a just man, wherever born, and that an end will be made of the rule observed by Government departments in England of determining questions of personal status by Consular certificates, not infrequently given, or withheld, regardless of the merits. The doctrine of perpetual allegiance to a tyrant ruler or to a corrupt State acts as a nightmare to many sufferers and should be relegated to the limbo of obsolete curiosities. It should be replaced throughout

the civilised world by the gospel of expatriation, as recognised and practised in the United States of America, where it is impossible for men to be consigned to the position of pariahs or outcasts by a degenerate ruler from whose territory they may have made their escape. When a man emigrates to the United States and exercises the right of expatriation he severs any tie of allegiance to the country of his birth whilst he continues outside its political sphere, and thenceforward cannot be regarded there as an alien enemy of the country of his adoption. Is there any reason why the like immunity should not be extended to well-ordered citizens in all countries ? The change which I advocate is no mere academic proposition. The break-up of Spanish dominion in South America followed upon the European upheaval checked, if not terminated, by the Treaty of Vienna. Correspondingly the Treaty concluded with Germany and those now in negotiation at Versailles will extend recognition to many nations and groupings of nations from which it has hitherto been withheld. " The old order changeth " is less an ancient proverb than a living prophecy, and who shall gainsay that we are not on the eve of yet further changes in every part of the world, in which individuality and character are destined to play a determining *rôle ?* We have not outlived the formula "Liberty, Equality, Fraternity"; but do we live up to it ? The Treaty of Vienna was imposed on Europe by reactionaries, and has served grievously to retard the realisation of the aspirations of man to be permitted, without let or hindrance from princes or other rulers, to live his own life as a good citizen. Since then great advances have been made ; but much remains to be accomplished to level up humanity as a whole. The clear conception of first principles is needed, but in no direction is this more essential than in determining the status of the citizen. To-day it is the stranger within our gates whose position we need to consider, and yet when we are within his the question becomes no less urgent. It is no longer possible to regard as confined within geographical boundaries nations who, in addition to the great discoveries

of steam and electricity, add now the aeroplane to their equipment.

The organisation of the country for war, involving as it has done a wholly unprecedented increase in bureaucratic government in which the restraints imposed by public control in ordinary times have been swept to the winds, has occasioned among every class of the community a surfeit of autocratic rule and an impatience for the demobilisation of improvised departments. Comparative statistics as to cost, alike of necessary as of wasteful work, in this and other countries should prove illuminating. Anything, however, short of victory would have occasioned consequences infinitely worse than any experienced by the victors. Times of reconstruction following on a war are proverbially more difficult to negotiate than those of war itself! Were it to stand alone, the mobilisation of hundreds of thousands of women was well calculated to awaken ambitions destined to prove permanent and dynamic. Again the exaltation of the aspirations of democracy has awakened the people to an appreciation of organised endeavour which must have far-reaching results of good or ill, according to the choice which they may make of their leaders.

In the European sphere the sovereign State emerged at the end of the fifteenth century under the inspiration of Machiavelli, from which date forward international policy has meant Machiavellianism. Lowes Dickinson, in his "European Anarchy" (Geo. Allen and Unwin, Ltd.), comments: "It is symbolical of all that was to follow that at that point stands, looking down the vista of the centuries, the brilliant and sinister figure of Machiavelli. . . . Sometimes the masters of the craft, like Catharine de Medici or Napoleon, have avowed it; sometimes, like Frederick the Great, they have disclaimed it. But always they have practised it. They could not, indeed, practise anything else. For it is as true of an aggregation of States as of an aggregation of individuals that, whatever moral sentiment may prevail, if there is no common law and no common force the best intentions will be defeated by lack of confidence and security." Lord Acton reminds

us that Machiavelli is "the contemporary of every politician" with a seat in Cabinets down to our own day. . . . Frederick the Great, in his youth, wrote a counterblast to Machiavelli, "an edifying homily against rapacity, perfidy, arbitrary government, unjust war—in short, against almost everything for which its author is now remembered among men." Lowes Dickinson argues that in the past empire over Europe has been sought by Spain, by Austria and by France as it once was achieved by Rome, and refers to the late aspirations of soldiers, politicans and professors in Germany to secure it for that country. On the other hand, Great Britain has long stood, as she stands now, for the balance of power. He urges that in the absence of law, common to all countries, and a common authority—such as a League of Nations—conditions leading to war must continue as at present.

George G. Wilson (Professor of International Law, Harvard University) traces the various attempts to establish a close society of European States which should assume to itself the direction of affairs in matters which concerned any considerable number of its members. Speaking of the close of the Thirty Years' War when the Treaty of Westphalia was signed in 1648, he remarks that gradually a family of nations developed and assumed the right to determine what other States might be admitted to share the prerogatives which it claimed. The idea that the family was limited to States of Western Europe was enlarged with the admission of Russia under Peter the Great at the beginning of the eighteenth century. Membership was supposed to be based on Christian civilisation. The family group was enlarged at a later date by the inclusion of the United States as the first non-European member, followed by the admission of the Central and South American States. A wide departure was made in 1856 when, for political reasons, Turkey was in form, though with many disabilities, admitted. Japan has been placed on a footing of full equality with all members of the international circle since 1897.

The reactionary Treaty of Vienna of 1815

which rendered inevitable the war of 1914 will, I confidently hope, be followed by the establishment of a new world order based on the interdependence of nations, great and small, and the final discrediting of diplomatic chicanery. President Wilson's firm grasp of the principles of political science and his comprehensive knowledge of the needs of the present age afford just ground for the conclusion that the League of Nations will prove no illusion, but a firm barricade for all time against the pretensions of a feudalistic caste. The world organised for peace should not prove a mere dream, but an inspiration leading to constructive work in which all can play some part, however small, to ensure success.

Innumerable have been the instances of wasted power with consequential friction resulting from the absence hitherto of interstate government as between European nations. The League of Nations is designed to accomplish that re-grouping and federation of the peoples for economic and governmental purposes alike which the Constitution of the United States has with such eminent success effected in America ; and I regard its inclusion in the forefront of the Peace Treaty as the recognition on the part of the subscribing Powers of the inadequacy of previous provision for safeguarding or for advancing human economic interests, based on the principle of the straight deal. The day has, I trust, passed when the governmental machinery of one people can or will be employed to obstruct and defeat the legitimate aspirations and claims of another. That it should have been so used in the past is but too well established.

Dicey (in "The Law of the Constitution," pp. 66–7) referring to the Union of the Parliaments of England and Scotland, remarks that, though the fact is often overlooked, the Parliaments both of England and Scotland did, at the time of the Union, each transfer sovereign power to a new sovereign body, namely, the Parliament of Great Britain. Correspondingly it may be said that the High Contracting Powers, parties to the League of Nations have, in fact, formed a new instrument of government to

promote the welfare of no one Power to the exclusion of others, but reciprocally the collective welfare of all. No previous document of such world-wide importance has ever been formulated, for whilst constituting a record it marked an era surpassing all previous eras, such as the Norman Conquest, the Reformation, the Discovery of America, the Great Rebellion, the War of American Independence, and the French Revolution. It furthermore enthrones "Justice" in the International Court to be established for the trial of men charged with high crimes against the law of nations and for the punishment of such as may be proved guilty.

The hue and cry against everything and everyone foreign exhibits an absence of discrimination scarcely flattering to our historic sense or to our claim to be considered a level-headed people. An Englishman asking himself the question, "What has been the nationality of my ancestors for the past, say, thirty generations?" (extending over a lesser period than that dating back to the period of Edward the Confessor), would experience some rude and unexpected shocks on learning the truth, which should induce him to reflect before he favours a erusade of expulsion of people against whom the only fault alleged is—not that this or that man is of a given nationality, according as that term is interpreted, but whether he, or his ancestors before him, have had the good or evil fortune, as the case may be, to live under an Enemy Sovereign Power. The test of nationality, consisting of a mosaic of nations constituted on varying lines, is indeed an extraordinary proposal when it is noted that each man or woman must be deemed to have had a father and mother and that leaving out interracial or mixed marriages and, were it possible, those between relations, it would be necessary to admit of his birth that he should have had within the period mentioned no less than 2,147,792,632 forebears. The population of the world being too restricted to admit of the exclusion of inter-racial and inter-relation marriages, it follows that these must have been numerous during such thirty generations. The Jews claim relative, though not entire immunity

from the mixture of foreign blood, and certainly they have preserved the purity of their race in a pre-eminent degree, but the Jews stand apart and no such claim to race purity can be asserted by any other people. Europeans rightly resented Chinese exclusiveness expressed in the Chinese walls, and should beware of atavism or reversion to conceptions which civilisation has outgrown. A nation's strength must, in the last analysis, depend on the rearing of a healthy stock, intellectually endowed, wisely educated and eager to live the strenuous life and not on the measure of protection afforded to the feeble in mind and body, or to the indolent. The Poles and the Jews have had but few apologists —the Jews, in particular, experiencing prejudices, not infrequently resulting from ignorance on the part of the unread or those who have not read sufficiently to enable them to form a judgment which others acquainted with facts could respect.

Within the past few years only has the Legislature of this country repealed the Scotch Acts imposing high penalties on any Scotsman importing an Inglisman into Scotland for the purposes of trade. That the Scotch should have exhibited such sensitiveness must surely have been the result of a Scotch joke, when one recalls their incurable characteristic for foreign travel, and indeed with the re-establishment of the Scottish Legislature, now looming in the near future, it may be presumed that the Scotch will not repeal the repealing statute, but will recognise the march of events. Whether there will be any differentiation between Scotch level-headedness and that exhibited by the Home Office of this country in synthesising, registering and labelling the ravings of the illiterate as British policy, remains to be seen! Englishmen, however, will no longer rest content with the treatment by the Home Office of their most cherished liberties as mere scraps of paper, nor suffer the continuance of Government control in spheres from which it should be rigidly excluded. The issue of Home Office *lettres de cachet*, the arrest and detention of citizens in prison without trial on the ground that being Russian Jews they are undesirables,

and the deportation of such to Russia constitute a veritable black page in Home Office History. Except for good cause shown in open Court, a Russian Jew, or a Jew of any other country, who has come to this country and acquired its rights and discharged the obligations of citizenship, should enjoy British sanctuary. It may be convenient that a summary procedure should exist for expeditiously determining whether a man or woman of foreign origin should or should not be suffered to continue resident here, preliminary to early deportation; but, seemingly, there can be no extenuating circumstance for detaining a suspect in prison for three years, without trial, and for continuing the Home Office regulation permitting of his or her detention solely on the report of some official who may or may not have been misled as to the facts, or whose law on the question of nationality may prove to be independable. In every case, a suspect should be entitled, at least, to demand and to receive a fair trial, in open Court. Dark rumours had reached me before the war as to New Scotland Yard officials employing the machinery of the Home Office for effecting the summary deportation of aliens, alleged to be undesirables, when I was impressed by the serious danger which such procedure constituted to individuals, were the Home Office to act on representations made by informers, actuated by ulterior ends. That the danger was a very real one, we have since seen in the wholesale arrest in Manchester, and elsewhere, of Jews of Russian birth. Many have since been deported without even the pretence of a trial, whilst others have been temporarily released on furnishing a bond given by two securities in £100 for the man's surrender to the Police on request. In cases which have come under my notice I have failed to elicit what were the grounds for the arrest and detention of the men. Incidentally, as illustrating Home Office methods and delays, I would mention that even after the bond had been given, in the form prescribed by the Home Office, to admit of a man's discharge from Brixton Prison, a delay of 14 days may ensue before the man is released, and yet a further 14 days before the man's identity book (without

which he cannot travel from one town to another) is restored. That Russian methods of governmental lawlessness are not confined to Russia, but extend to the Home Office here, is established by the action of that Department in relation to Jews who have emigrated to this country from Roumania. The Home Office had not even the excuse of a military convention between this Country and Roumania to justify its policy towards these unfortunates ; but, this notwithstanding, it permitted the Police to notify such Jews who had been refused recognition in Roumania as Roumanian subjects, that failing their ability to obtain a certificate from the Roumanian Ministry in London of Roumanian nationality, or their joining up in the Roumanian Army, their identity book would be withheld and themselves interned. The action was collusive between the Home Office and the Roumanian Government and clearly reprehensible ; while it is not surprising that rumours as to corruption on the part of the Police in demanding and collecting bribes for abstaining from interning such men were painfully frequent.

The British tax-payer is informed by the Treasury that economy is requisite ! I have yet to learn that the mobilisation in the British Army of Russian Labour Battalions serves any military end, and it may be that the Treasury should address itself to the War Office to terminate the useless expenditure occasioned by their retention. The continuance of these Corps is an administrative blunder, and is occasioning a strong sense of injustice.

This paper is intended to establish that the term " nationality " is not present in the vocabulary of precise language, and that neither the Home Office nor, much less, the Police should continue as the Authority for its definition. Furthermore, if the term " State " is to be deemed to signify " Power," as when we speak of the Great Powers, nationality is not necessarily relevant thereto. Again, the conception of allegiance, whether the term is employed in relation to a national of Russia or Great Britain, is based not upon international law, but on a municipal or local code, and is personal to the

Sovereign. Alternatively, assuming allegiance to have attached and to have continued, the subject was absolved therefrom by the last Czar's abdication. The claim asserted by the Czar to the perpetual allegiance of a man, whether a Jew or a non-Jew, born within his territorial jurisdiction, and to the allegiance of his descendants throughout eternity, until released by Imperial ukase, was and is an archaic absurdity, and the action of the Home Office in holding that the status of the son of such a man born outside Russian territory is Russian, should be immaterial for determining his state-hood in this country. I claim that Jewish nationality is a fact of history recognised for the past 6,000 years, and probably destined to continue to the end of time, and of which we must take political cognisance, regardless of predilection. With the creation of the League of Nations, inaugurating the Commonwealth of Nations, a new departure should be made for henceforth determining the liberty of the subject, to establish his status on a footing satisfactory to himself and to the Power to which he may desire to be attached, and for wholly repudiating the doctrine of perpetual allegiance and the jurisdiction of any Power to engage by convention to bind a man, not within its territory, to engage in the military service of another Power.

I am emphatically of the opinion that the Jews who or whose fathers experienced Russian persecution were both legally and morally entitled to renounce allegiance to Russia, and to repudiate the Russo-British Military Convention; and that it is contrary to British traditions of fair play that the Home Office should base its directions to arrest and imprison men preliminary to deportation upon their refusal to recognise the authority, not of M. Kerensky's Government, but that of M. Terestchenko to order them to return to Russia, probably to starve, or alternatively to serve in the British Army.

The following extract from a Book Review by Sir Frederick Pollock, appearing in *The Law Quarterly Review* for July last, seems to me particularly appropriate to the present case:—

"Some gross fictions are still repeated in current books, and occasionally pass unrebuked in court; and it still does not appear to be generally thought discreditable to an English lawyer to be unscholarly even in the technical learning of his own profession, and inaccurate in every other kind of knowledge. Even the most modern legislator, too, may learn something from history about the old stumbling-blocks in his way—and the toes it is not good to tread on, for human toes have not changed much in historical times."

May I conclude with a reference to a singularly interesting incident.

On the President's visit to the City of London it was felt that as a foreigner he could not be presented with the Freedom of the City, and hence recourse was had to handing him an address. When, however, he reached Manchester he could not, as a past master of political science, have failed to observe that he was recognised as a British subject, being the grandson of an Englishman, and was presented with the Freedom of that city. He is presumably over military age, but for which fact he could have been conscripted into the British Army as a British subject, or alternatively as an American under the Convention exchanged with the United States after long hesitation—presumably as to its validity.

The Act of 1917 and the Convention with Russia pursuant thereto are based on radically unsound premises—the continuing existence of the feudal right of rulers, as exercised in Tudor times, to the perpetual allegiance of their *soi-disant* subjects. Fallacies die hard, and the Act supplies an interesting illustration of the fact.

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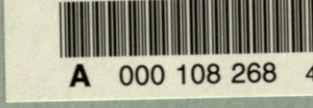
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